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MACCORD MASON PLLC 300 N. GREENE STREET, SUITE 1600 P. O. BOX 2974 GREENSBORO, NC 27402			PIZIALI, ANDREW T	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/720,947

Applicant(s)

MCMURRAY, BRIAN L.

Examiner

Andrew T. Piziali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 3,10,11,16,18-20,23-33 and 41-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,12-15,17,21,22 and 34-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 4/17/2006 has been entered. The examiner has withdrawn the objection to the specification based on the amendment to the specification.

### ***Claim Objections***

2. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 1 already establishes that the fabric has two sides, therefore, the fabric is reversible.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 12, 13 and 17 recite the limitation "the fiber." There is insufficient antecedent basis for this limitation in the claims.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 5, 12-14, 22 and 34-40 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 3,041,861 to Kasey.

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Regarding claims 1-2, 5, 12-14, 22 and 34-40, Kasey discloses a multi-directional fabric comprising a two-sided single layer warp knit fabric further comprising a first side and a second side that are integrally formed using at least two guide bars, such that the first and second sides have at least one different quality (differential shrinkage) from the other side, thereby providing a multi-directional performance fabric for use alone or as an article including the fabric (see entire document including column 1, lines 32-44, column 2, lines 7-67, and column 3, lines 3-19).

Regarding the fabric being a “stretch performance” fabric, the specification does not define the meaning of the term. The term has been interpreted to include a fabric comprising synthetic or natural fibers that are capable of stretching to any degree, such as cotton or wool. It is noted that claim 12 specifically claims that the fibers can be cotton or wool, therefore, a fabric comprising cotton or wool fibers is considered a stretch performance fabric. Kasey discloses that the fabric may comprise cotton or wool fibers (column 2, lines 7-67).

Regarding claim 5, Kasey discloses that three guide bars may be used (column 3, lines 3-19).

Regarding claim 12, Kasey discloses that the fiber may be polyester, cotton or wool (column 2, lines 7-36).

Regarding claim 13, Kasey discloses that the fiber may be spun staple or a combination of fibers (column 2, lines 7-10).

Regarding claim 14, regarding the fiber being a “stretch yarn component”, the specification does not define the meaning of the term. The term has been interpreted to include a fiber comprising synthetic or natural material that is capable of stretching to any degree, such as

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cotton or wool. It is noted that claim 12 specifically claims that the fibers can be cotton or wool, therefore, a fiber comprising cotton or wool material is considered a stretch yarn component.

Kasey discloses that the fabric may comprise cotton or wool fibers (column 2, lines 7-67).

Regarding claim 22, Kasey discloses that the differential shrinkage yarns may provide for 100% quality unique to each side (column 2, lines 45-48).

Regarding claim 34, Kasey discloses that the fabric may have a weight of 3.37 oz/yd<sup>2</sup> (considered to be about 4 oz/yd<sup>2</sup>) (see Examples).

Regarding claim 35, Kasey discloses that the fiber components forming the fabric may have a weight of 40 denier (see Examples).

Regarding claims 37-40, Kasey discloses that the fabric may be used to make an article such as slips, gowns, lingerie, dresses, blouses, and outer-wear fabrics (column 3, lines 60-64).

7. Claims 1-2, 5, 12-14, 22 and 35-40 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,065,600 to Byles.

Regarding claims 1-2, 5, 12-14, 22 and 35-40, Byles discloses a multi-directional fabric comprising a two-sided single layer warp knit fabric further comprising a first side and a second side that are integrally formed using at least two guide bars, such that the first and second sides have at least one different quality (hydrophilic versus hydrophobic) from the other side, thereby providing a multi-directional performance fabric for use alone or as an article including the fabric (see entire document including column 1, line 66 through column 2, line 63, column 3, lines 15-31, and column 4, lines 50-66).

Regarding the fabric being a “stretch performance” fabric, the specification does not

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define the meaning of the term. The term has been interpreted to include a fabric comprising synthetic or natural fibers that are capable of stretching to any degree, such as cotton or wool. It is noted that claim 12 specifically claims that the fibers can be cotton or wool, therefore, a fabric comprising cotton or wool fibers is considered a stretch performance fabric. Byles discloses that the fabric may comprise cotton fibers (column 2, lines 12-22).

Regarding claim 5, Byles discloses that three guide bars may be used (column 2, lines 48-63).

Regarding claim 12, Byles discloses that the fibers may comprise a combination of polyester and cotton (column 2, lines 12-22).

Regarding claim 13, Byles discloses that the fiber may be a combination of spun staple and multifilament (column 2, lines 12-22).

Regarding claim 14, regarding the fiber being a “stretch yarn component”, the specification does not define the meaning of the term. The term has been interpreted to include a fiber comprising synthetic or natural material that is capable of stretching to any degree, such as cotton or wool. It is noted that claim 12 specifically claims that the fibers can be cotton or wool, therefore, a fiber comprising cotton or wool material is considered a stretch yarn component. Byles discloses that the fabric may comprise cotton fibers (column 2, lines 12-22).

Regarding claim 22, Byles discloses that the hydrophobic/hydrophilic yarns may provide for 100% quality unique to each side (column 2, lines 43-47).

Regarding claim 35, Byles discloses that fiber components forming the fabric may have a weight of between about 20 to about 150 denier (see Examples).

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Regarding claim 36, Byles discloses that the fabric can be non-pile (column 2, lines 43-47).

Regarding claims 37-40, Byles discloses that the fabric may be used to make an article such as active wear, sportswear, diapers, garments, pads, and various other articles (column 1, lines 15-38).

8. Claims 1-2, 4-5, 12-15, 22 and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,542,269 to Richards.

Regarding claims 1-2, 4-5, 12-15, 22 and 35-37, Richards discloses a multi-directional fabric comprising a two-sided single layer warp knit fabric further comprising a first side and a second side that are integrally formed using at least two guide bars, such that the first and second sides have at least one different quality (satin-effect versus elastic) from the other side, thereby providing a multi-directional performance fabric for use alone or as an article including the fabric (see entire document including column 2, lines 38-58, column 3, lines 15-29, and column 4, lines 16-34). Regarding the fabric being a “stretch performance” fabric, Richards discloses that the fabric may comprise LYCRA spandex fibers (column 3, lines 15-29).

Regarding claims 4 and 14-15, Richards discloses that the fabric may comprise LYCRA spandex fibers (column 3, lines 15-29).

Regarding claim 5, Richards discloses that three guide bars may be used (column 2, lines 38-58).

Regarding claim 12, Richards discloses that the fibers may comprise polyester (column 3, lines 15-29).

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Regarding claim 13, Richards discloses that the fiber type may comprise multifilament (column 3, lines 15-29).

Regarding claim 22, Richards discloses that the different quality may provide for 100% quality unique to each side (column 4, lines 16-35).

Regarding claim 35, Richards discloses that the fiber components forming the fabric may have a weight of 20 to 105 denier (column 3, lines 15-29).

9. Claims 1-2, 5, 12-14, 22 and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,619,869 to Tacy.

Regarding claims 1-2, 5, 12-14, 22 and 35-37, Tacy discloses a multi-directional fabric comprising a two-sided single layer warp knit fabric further comprising a first side and a second side that are integrally formed using at least two guide bars, such that the first and second sides have at least one different quality (luster) from the other side, thereby providing a multi-directional performance fabric for use alone or as an article including the fabric (see entire document including column 1, lines 40-47 and column 3, lines 31-43).

Regarding the fabric being a “stretch performance” fabric, the specification does not define the meaning of the term. The term has been interpreted to include a fabric comprising synthetic or natural fibers that are capable of stretching to any degree, such as polyester. It is noted that claim 12 specifically claims that the fibers can be polyester, therefore, a fabric comprising polyester fibers is considered a stretch performance fabric. Tacy discloses that the fabric may comprise polyester fibers (column 3, lines 31-43).

Regarding claim 5, Tacy discloses that three guide bars may be used (column 1, lines 40-47).



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Regarding claim 12, Tacy discloses that the fiber may comprise polyester fibers (column 3, lines 31-43).

Regarding claim 13, Tacy discloses that the fiber may comprise multifilament fibers (column 3, lines 31-43).

Regarding claim 14, regarding the fiber being a “stretch yarn component”, the specification does not define the meaning of the term. The term has been interpreted to include a fiber comprising synthetic or natural material that is capable of stretching to any degree, such as polyester. It is noted that claim 12 specifically claims that the fibers can be polyester, therefore, a fiber comprising polyester material is considered a stretch yarn component. Tacy discloses that the fabric may comprise polyester fibers (column 3, lines 31-43).

Regarding claim 22, Tacy discloses that the one different quality may provide for 100% quality unique to each side (column 3, lines 31-43).

Regarding claim 35, Tacy discloses that the fiber components forming the fabric may have a weight of 40 to 70 denier (column 3, lines 31-43).

10. Claims 1-2, 4-5, 12-15, 22 and 35-40 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,855,124 to Donaghy et al. (hereinafter referred to as Donaghy).

Regarding claims 1-2, 4-5, 12-15, 22 and 35-40, Donaghy discloses a multi-directional fabric comprising a two-sided single layer warp knit fabric further comprising a first side and a second side that are integrally formed using at least two guide bars, such that the first and second sides have at least one different quality (satin-effect versus elastic) from the other side, thereby providing a multi-directional performance fabric for use alone or as an article including the fabric (see entire document including column 1, line 59 through column 2, line 45, column 3,

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lines 41-61, and column 4, line 14 through column 5, line 18). Regarding the fabric being a “stretch performance” fabric, Donaghy discloses that the fabric may comprise spandex fibers (column 5, lines 9-18).

Regarding claims 4 and 14-15, Donaghy discloses that the fabric may comprise spandex fibers (column 5, lines 9-18).

Regarding claim 5, Donaghy discloses that three guide bars may be used (column 3, lines 41-61).

Regarding claim 12, Donaghy discloses that the fiber may comprise polyester fibers (column 4, lines 14-47).

Regarding claim 13, Donaghy discloses that the fiber may comprise multifilament fibers (column 4, lines 14-47).

Regarding claim 22, Donaghy discloses that the one different quality may provide for 100% quality unique to each side (column 5, line 62 through column 6, line 8).

Regarding claim 35, Donaghy discloses that the fiber components forming the fabric may have a weight of 20 to 140 denier (column 4, line 58 through column 5, line 18).

Regarding claims 37-40, Donaghy discloses that the fabric may be used to make a bra (column 1, lines 6-13).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,041,861 to Kasey as applied to claims 1-2, 5, 12-14, 22 and 34-40 above, and further in view of anyone of USPN 4,870,839 to Odham or USPN 4,879,169 to Zafiroglu.

Kasey discloses that any shrinkable yarn may be used (column 2, lines 7-36), but Kasey does not specifically mention the use of spandex yarn. Odham and Zafiroglu disclose that it is known in the knit fabric art to use spandex yarn and that spandex is known to shrink (see entire documents including column 1, lines 5-31 of Odham and column 2, lines 35-43 of Zafiroglu). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarn from any suitable shrinkable yarn material, such as spandex, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

13. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,041,861 to Kasey as applied to claims 1-2, 5, 12-14, 22 and 34-40 above, and further in view of anyone of USPN 4,574,397 to Dennard or USPN 5,123,117 to Prendergast.

Regarding claims 6-9, Kasey does not appear to specifically disclose that the at least one different quality between fabric sides may include a color difference, but Kasey does disclose that the fabric may be used to produce outerwear (column 3, lines 60-64). Dennard and

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Prendergast each disclose that it is known in the outerwear fabric art to use different colors for the two sides of a jacket fabric so that the jacket provides different colors when reversed (see entire document including column 1, lines 18-45 of Dennard and column 1, lines 6-68 of Prendergast). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the at least one different quality include a color and/or shade difference, because the different colors and/or shades would allow for a different color and/or shade garment when reversed and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claim 7, Dennard and Prendergast are silent with regards to specific methods of varying the color of the fibers, therefore, it would have been obvious to look to the prior art for conventional methods. The examiner takes Official Notice that dyeing is a well-known method of changing the color of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric sides possess different colors by dyeing the sides different colors, motivated by the expectation of successfully practicing the invention of Kasey.

Regarding claim 8, it is the examiner's position that the article taught or suggested by the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made

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by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show obvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,041,861 to Kasey as applied to claims 1-2, 5, 12-14, 22 and 34-40 above, and further in view of USPN 5,916,273 to Hepfinger.

Kasey does not appear to specifically mention the use of microdenier fibers, but Hepfinger discloses that it is known in the knitted fabric art to use microdenier fibers for a variety of reasons, including to enhance the feel and softness of the fabric (see entire document including column 1, lines 4-9 and column 4, lines 5-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include microdenier fibers, because microdenier fibers enhance the feel and softness of the fabric and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

15. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,041,861 to Kasey as applied to claims 1-2, 5, 12-14, 22 and 34-40 above, and further in view of Applicant's Disclosure.

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Kasey discloses that the fabric may be prepared using any standard knitting machine (column 3, lines 2-19), but Kasey does not appear to specifically mention a stitch evasion technique. The current specification discloses that the stitch evasion technique is known to one skilled in the art of warp knitting (page 23, lines 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the knit fabric from any suitable knitting technique, such as stitch evasion, because it is within the general skill of a worker in the art to select a known knitting technique on the basis of its suitability and desired characteristics.

16. Claims 4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,065,600 to Byles as applied to claims 1-2, 5, 12-14, 22 and 35-40 above, and further in view of anyone of USPN 5,222,313 to Dowdy et al. (hereinafter referred to as Dowdy) or USPN 5,735,835 to Holland.

Byles discloses that any hydrophobic synthetic yarn may be used (column 2, lines 12-22), but Byles does not specifically mention the use of spandex yarn. Dowdy and Holland each disclose that it is known in the fiber art that spandex is hydrophobic (see entire documents including column 3, lines 52-62 of Dowdy and column 5, lines 27-30 of Holland). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hydrophobic yarn from any suitable hydrophobic yarn material, such as spandex, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

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17. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,065,600 to Byles as applied to claims 1-2, 5, 12-14, 22 and 35-40 above, and further in view of anyone of USPN 4,574,397 to Dennard or USPN 5,123,117 to Prendergast.

Regarding claims 6-9, Byles does not appear to specifically disclose that the at least one different quality between fabric sides may include a color difference, but Byles does disclose that the fabric may be used to produce active wear and sportswear (column 1, lines 15-38). Dennard and Prendergast each disclose that it is known in the outerwear fabric art to use different colors for the two sides of a jacket fabric so that the jacket provides different colors when reversed (see entire document including column 1, lines 18-45 of Dennard and column 1, lines 6-68 of Prendergast). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the at least one different quality include a color and/or shade difference, because the different colors and/or shades would allow for a different color and/or shade garment when reversed and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claim 7, Dennard and Prendergast are silent with regards to specific methods of varying the color of the fibers, therefore, it would have been obvious to look to the prior art for conventional methods. The examiner takes Official Notice that dyeing is a well-known method of changing the color of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric sides possess different colors by dyeing the sides different colors, motivated by the expectation of successfully practicing the invention of Byles.

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Regarding claim 8, it is the examiner's position that the article taught or suggested by the applied prior art is identical to or only slightly different than the claimed article.

18. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,065,600 to Byles as applied to claims 1-2, 5, 12-14, 22 and 35-40 above, and further in view of USPN 5,916,273 to Hepfinger.

Byles does not appear to specifically mention the use of microdenier fibers, but Hepfinger discloses that it is known in the knitted fabric art to use microdenier fibers for a variety of reasons, including to enhance the feel and softness of the fabric (see entire document including column 1, lines 4-9 and column 4, lines 5-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include microdenier fibers, because microdenier fibers enhance the feel and softness of the fabric and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

19. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,065,600 to Byles as applied to claims 1-2, 5, 12-14, 22 and 35-40 above, and further in view of Applicant's Disclosure.

Byles does not limit the technique used to construct the fabric, but Byles does not appear to specifically mention a stitch evasion technique. The current specification discloses that the stitch evasion technique is known to one skilled in the art of warp knitting (page 23, lines 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the knit fabric from any suitable knitting technique, such as stitch evasion,



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because it is within the general skill of a worker in the art to select a known knitting technique on the basis of its suitability and desired characteristics.

20. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,065,600 to Byles (as applied to claims 1-2, 5, 12-14, 22 and 35-40 above).

Byles does not mention specific fabric weights, but Byles does disclose that weight of the fabric may be selectively modified and varied, as desired, to achieve differing embodiments of the fabric suited to differing end uses (column 8, lines 42-56). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the weight of the fabric, such as from 4 to 12 oz/yd<sup>2</sup>, to achieve differing embodiments of the fabric suited to differing end uses.

21. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,542,269 to Richards as applied to claims 1-2, 4-5, 12-15, 22 and 35-37 above, and further in view of USPN 5,916,273 to Hepfinger.

Richards does not appear to specifically mention the use of microdenier fibers, but Hepfinger discloses that it is known in the knitted fabric art to use microdenier fibers for a variety of reasons, including to enhance the feel and softness of the fabric (see entire document including column 1, lines 4-9 and column 4, lines 5-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include microdenier fibers, because microdenier fibers enhance the feel and softness of the fabric and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

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22. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,542,269 to Richards as applied to claims 1-2, 4-5, 12-15, 22 and 35-37 above, and further in view of Applicant's Disclosure.

Richards does not limit the technique used to construct the fabric, but Richards does not appear to specifically mention a stitch evasion technique. The current specification discloses that the stitch evasion technique is known to one skilled in the art of warp knitting (page 23, lines 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the knit fabric from any suitable knitting technique, such as stitch evasion, because it is within the general skill of a worker in the art to select a known knitting technique on the basis of its suitability and desired characteristics.

23. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,619,869 to Tacy as applied to claims 1-2, 5, 12-14, 22 and 35-37 above, and further in view of USPN 5,916,273 to Hepfinger.

Tacy does not appear to specifically mention the use of microdenier fibers, but Hepfinger discloses that it is known in the knitted fabric art to use microdenier fibers for a variety of reasons, including to enhance the feel and softness of the fabric (see entire document including column 1, lines 4-9 and column 4, lines 5-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include microdenier fibers, because microdenier fibers enhance the feel and softness of the fabric and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

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24. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,619,869 to Tacy as applied to claims 1-2, 5, 12-14, 22 and 35-37 above, and further in view of Applicant's Disclosure.

Tacy does not limit the technique used to construct the fabric, but Tacy does not appear to specifically mention a stitch evasion technique. The current specification discloses that the stitch evasion technique is known to one skilled in the art of warp knitting (page 23, lines 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the knit fabric from any suitable knitting technique, such as stitch evasion, because it is within the general skill of a worker in the art to select a known knitting technique on the basis of its suitability and desired characteristics.

25. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,855,124 to Donaghy (as applied to claims 1-2, 4-5, 12-15, 22 and 35-40 above).

Regarding claims 6-9, Donaghy discloses that first side may have a bright, lustrous appearance (column 4, lines 14-18), but Donaghy does not appear to specifically disclose that the at least one different quality between sides may include a color difference. Considering that Donaghy discloses that the type, size, and physical characteristics of the yarns of the different layers can be selectively varied as necessary or desirable to adjust the weight, hand, and dyeability (column 4, lines 58-65), it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the two sides vary in dyed color and/or shade, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

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Regarding claim 8, Donaghy does not specifically mention which dyeing process may be used, but it is the examiner's position that the article taught or suggested by the applied prior art is identical to or only slightly different than the claimed article.

26. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,855,124 to Donaghy as applied to claims 1-2, 4-5, 12-15, 22 and 35-40 above, and further in view of USPN 5,916,273 to Hepfinger.

Donaghy does not appear to specifically mention the use of microdenier fibers, but Hepfinger discloses that it is known in the knitted fabric art to use microdenier fibers for a variety of reasons, including to enhance the feel and softness of the fabric (see entire document including column 1, lines 4-9 and column 4, lines 5-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include microdenier fibers, because microdenier fibers enhance the feel and softness of the fabric and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

27. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,855,124 to Donaghy as applied to claims 1-2, 4-5, 12-15, 22 and 35-40 above, and further in view of Applicant's Disclosure.

Donaghy does not limit the technique used to construct the fabric (column 3, lines 41-61), but Donaghy does not appear to specifically mention a stitch evasion technique. The current specification discloses that the stitch evasion technique is known to one skilled in the art of warp knitting (page 23, lines 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the knit fabric from any suitable knitting

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technique, such as stitch evasion, because it is within the general skill of a worker in the art to select a known knitting technique on the basis of its suitability and desired characteristics.

***Response to Arguments***

28. Applicant's arguments filed 4/17/2006 have been fully considered but they are not persuasive.

Regarding the objection to claim 2, the applicant asserts that a reversible fabric is a fabric in which either side of the fabric may be considered the inner or outer face of the fabric.

Although the examiner recognizes applicant's definition of a reversible fabric, the applicant has failed to address how claim 2 is allegedly further limiting. As stated in the claim objection, claim 1 already establishes that the fabric has two sides, therefore, the fabric is reversible.

Regarding the 35 U.S.C. 112 rejection of claims 12, 13 and 17, without evidence or an explanation the applicant asserts that a fiber is inherent in the fabric of claim 1. The examiner respectfully disagrees because claim 1 does not require a fiber. As shown by the cited definition of "fabric," a fabric may consist of yarns, fibers, or filaments.

The examiner indicated that "stretch performance" had been interpreted to include a fabric comprising synthetic or natural fibers that are capable of stretching because the specification does not define the term. In response, the applicant asserts that such a definition is "broad" and that one skilled in the art would construe "stretch performance" fabric as a fabric having an elastomeric component to impart stretch. The examiner respectfully disagrees. Claims are to be given their broadest most reasonable interpretation in view of the specification. The applicant asserts that the applied prior art does not read on the claimed invention because the applied prior art does not teach or suggest a fabric having an elastomeric component in multiple

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directions, but the claims clearly do not mention elastomeric components. The applicant is improperly reading limitations into the claims. Limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is noted that the applicant has failed to show, or attempt to show, why one skilled in the art would construe “stretch performance” fabric as a fabric having an elastomeric component. The applicant has failed to provide any evidence supporting this assertion.

The applicant asserts that there is no motivation to combine Kasey with Odham or Zafiroglu. The examiner respectfully disagrees. Kasey discloses that any shrinkable yarn may be used (column 2, lines 7-36), but Kasey does not specifically mention the use of spandex yarn. Odham and Zafiroglu disclose that it is known in the knit fabric art to use spandex yarn and that spandex is known to shrink (see entire documents including column 1, lines 5-31 of Odham and column 2, lines 35-43 of Zafiroglu). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarn from any suitable shrinkable yarn material, such as spandex, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding Kasey, the applicant asserts that Kasey requires an open construction but that the use of elastic thread would necessarily result in a closed construction. The examiner respectfully disagrees. An elastic thread can be used in an open construction. It is noted that the applicant has failed to show, or attempt to show, why the use of elastic thread would necessarily result in a closed construction. The applicant has failed to provide any evidence supporting this assertion.

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Regarding rejections in view of applicant's disclosure, the applicant asserts that at the time of applicant's invention one would not have applicant's disclosure. Applicant's argument is not persuasive because the current specification discloses that the stitch evasion technique was "generally known to one skilled in the art of warp knitting" (page 23, lines 16-18). The applicant is requested to submit a declaration stating that the stitch evasion technique was not generally known to one skilled in the art of warp knitting at the time of applicant's invention.

***Conclusion***

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

atp

gpb 6/12/06  
ANDREW T. PIZALI  
PATENT EXAMINER